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HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE
AND

HON'BLE Ms. JUSTICE G. ROHINI

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Writ Appeal No. 836 of 2007
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Between:

Smt. Mellimi Lakshmikantam

... Appellant

and

The Election Tribunal-cum-Principal
District Judge, West Godavari at Eluru & 5 others

... Respondents

:: J U D G M E N T ::

Counsel for the appellant : Shri M.V. Durga Prasad

Counsel for respondent No.2 : Shri C. Gunaranjan for
Shri C. Kodanda Ram

23rd October, 2007

Per G. S. Singhvi, CJ

This appeal is directed against order dated 30.04.2007 passed by the learned Single Judge in Writ Petition No.658 of 2007, whereby he declined to quash the proceedings of Election O.P.No.799 of 2006 pending before Election Tribunal-cum-Principal District Judge, West Godavari at Eluru (respondent No.1 herein).

Election to the office of Sarpanch, Kanuru Gram Panchayat of

Peravali Mandal, West Godavari District was held on 02.08.2006. The appellant and respondent Nos. 2 and 3 contested the election. The appellant was declared elected by securing 2081 votes. After 16 days, respondent No.2 filed petition under Sections 233, 19(3) and 22(1) of the Andhra Pradesh Panchayat Raj Act, 1994 (for short, 'the Act') read with Rule 2 (2)(i)(a) and 4(ii) of the Andhra Pradesh Panchayat Raj (Election Tribunals in respect of Gram Panchayats, Mandal Parishads and Zilla Parishads) Rules, 1995 (for short, 'the Rules') for setting aside the election of the first respondent (the appellant herein) to the post of Sarpanch and for declaring her (respondent No.2 herein) as duly elected. The same was registered as Election O.P. No. 799 of 2006. For better appreciation of the issue raised in the writ petition, the prayer clause of the petition filed by respondent No.2 is extracted below:

“ 11. The petitioner, therefore, prays that the Hon'ble Election Tribunal may be pleased:

a) to declare that the election of the first respondent as Sarpanch, Gram Panchayat Kanuru, Peravali Mandal, West Godavari District as void and to declare the petitioner as elected since she polled the next highest number of votes.

OR

In the alternative to order for fresh election to the post of Sarpanch, Gram Panchayat Kanuru, Peravali Mandal, W.G. District.

b) to award costs of the petition; and

c) to allow the petition with the above reliefs and with such other relief or reliefs as the Hon'ble Tribunal deems fit and just in the circumstances of the case.”

On notice, the appellant filed an application under Order VII Rule 11(d) of the Code of Civil Procedure read with Rule 3(2) and (7) of the Rules for dismissal of the Election O.P. by asserting that respondent No.1 does not have the jurisdiction to entertain the election petition. The same was dismissed by respondent No.1 vide order dated 04.01.2007. The appellant challenged that order in Writ Petition

No.658 of 2007. The learned Single Judge referred to the provisions of Rules 3 to 7 and 8 to 15 of the Rules, Section 22 of the Act and held:

“ A reading of Section 22(1) of the Act shows that when a member of Gram Panchayat becomes disqualified under Sections 17, 18, 19 and 20 of the Act or said elected member is not qualified for the Office, any voter or authority can give a complaint to executive authority in writing, and the latter after enquiry has to give intimation to member. In case of any doubt that an elected member has become disqualified or is not qualified, the voter, the aggrieved person or member or the Commissioner can apply to the District Court for a decision on the question whether a member is not qualified or has become disqualified. Thus, Section 22 of the Act operates altogether in different situation. Insofar as disqualifications, at the time of election, in the case of lack of qualification or disqualification at the time of elections, it is no doubt true that there is some overlapping of grounds mentioned in Rule 12 of the Rules. In case an election petition is not filed in thirty days, the elected candidate who is not having qualification or disqualified subsequently would certainly continue to hold public office without proper legal sanction. The Legislature was aware of this situation and intentionally chose to enact Section 22 of the Act. Having regard to the fact that the institution of Panchayat Raj is now constitutionally recognized by reason of part IX of Constitution, the concurrent jurisdiction conferred on the District Court and the respective election Tribunals as enumerated in sub-rule (2) of Rule 2 of the Rules is understandable. Merely because, an election dispute has been raised before the election Tribunal-cum-Junior Civil Judge in a case of Gram Panchayat does not mean that District Court is totally divested of any jurisdiction in such matters.

In this case, the first respondent filed a petition before the executive authority of Gram Panchayat under Section 22(1) of the Act and when no action was taken, she filed election O.P. before the District Court. There is no bar in directly filing such a petition before the District Court when inaction on the part of the Executive Officer is complained, which itself may be an issue before the District Court. In a given case, the District court might even reject such O.P., on the ground that petitioner therein has to go through the procedure contemplated under Section 22 of the Act. The same does not, however, lead to an inference that the District Court suffers from inherent lack of jurisdiction.”

The learned Single Judge then referred to the judgments in

N. Tirupataiah v. District Panchayat Officer^[1], Sarihaddu Ramya v. Gudiwada Rural Mandal Parishad^[2] and M. Jagannadha Rao v. Government of A.P.^[3] and observed:

“ The conspectus of the above three decisions is that whether or not an election petition is preferred under Section 233 of the Act, the voter, an unsuccessful candidate, the executive authority or the Commissioner of Panchayat are entitled to apply to the District Court for a decision as to the returned candidate was not qualified at the time of election, or incurred disqualification subsequently. In a given case, simultaneously both the remedies can also be pursued depending on the facts and circumstances of the case. For instance, if the election petition is filed on one ground and subsequently, the elected candidate incurs disqualification under Section 22 of the Act can be presented before the District Court. Therefore, this Court holds that first respondent does not suffer from any inherent lack of jurisdiction, and therefore, election O.P. is maintainable notwithstanding the fact that the second respondent purportedly filed petition under Section 233 of the Act read with the Rules. The mention of wrong provision would not disentitle the remedy under Section 22 of the Act.”

Shri M.V. Durga Prasad pointed out that the petition filed by respondent No.2 was for setting aside the election of the appellant as Sarpanch of the Gram Panchayat and for declaring her i.e. the writ petitioner as elected to that post and argued that only the Election Tribunal envisaged under Rule 2(2) of the Rules and not the District Court could entertain the same and that the learned Single Judge committed a serious error by sustaining the jurisdiction of respondent No.1 to entertain the election petition. Learned counsel referred to Sections 19, 22 and 233 of the Act and Rules 2 to 12 of the Rules and argued that the Election Tribunal constituted under Rule 2(2) alone has the jurisdiction to entertain and decide the dispute relating to election of the members and Sarpanchs and Up-Sarpanchs of Gram Panchayats and the learned Single Judge committed an error by holding that the election petition filed by respondent No.2 could be treated as one filed under Section 22(1) of the Act and respondent

No.1 had the jurisdiction to decide the same. Shri Durga Prasad submitted that under Section 22(1) of the Act, the District Court having jurisdiction over the area in which the office of the Gram Panchayat is situated can decide questions relating to disqualification of members of the Gram Panchayat, but the Presiding Officer of the District Court cannot entertain a petition filed under Section 233 read with Rules 2 and 4(ii) of the Rules. Learned counsel also emphasized that there does not exist any body like Election Tribunal-cum-Principal District Judge.

Shri C. Gunaranjan supported the order under challenge and argued that the learned Single Judge did not commit any error by refusing to entertain the appellant's challenge to the order passed by respondent No.1. He submitted that reference to Section 233 of the Act and Rules 2 and 4 of the Rules in the title of the petition filed by respondent No.2 is not conclusive and the learned Single Judge rightly held that dispute relating to disqualification of the appellant can be adjudicated by the District Court under Section 22(1) of the Act.

We have thoughtfully considered the entire matter. Sections 19(3), 22(1) and 233 of the Act and Rules 2(1), (2) (i) (a), 3, 5, 7 and 12 of the Rules, which have bearing on the decision of this appeal read as under:

“Section 19(3) Disqualification of candidates:

A person having more than two children shall be disqualified for election or for continuing as member:

Provided that the birth within one year from the date of commencement of the Andhra Pradesh Panchayat Raj Act, 1994 hereinafter in this clause referred to as the date of such commencement, of an additional child shall not be taken into consideration for the purposes of this clause;

Provided further that a person having more than two children (excluding the child if any born within one year from the date of such commencement) shall not be disqualified under this clause for so long as the number of children he had on the date of such commencement does not increase;

Provided also that the Government may direct that the disqualification in this section shall not apply in respect of a person for reasons to be recorded in writing.

Section 22 (1) Authority to decide questions of disqualifications of members:

Where an allegation is made that any person who is elected as a member of a Gram Panchayat is not qualified or has become disqualified under Section 17, Section 18, Section 19 or Section 20 by any voter or authority to the executive authority in writing and the executive authority has given intimation of such allegation to the member through the District Panchayat Officer and such member disputes the correctness of the allegation so made, or where any member himself entertains any doubt whether or not he has become disqualified under any of those sections, such member or any other member may, and the executive authority, at the direction of the Gram Panchayat or the Commissioner shall, within a period of two months from the date on which such intimation is given or doubt is entertained, as the case may be, applied to the (District Court) having jurisdiction over the area in which the office of the Gram Panchayat is situated for decision.

Section 233. Election Petitions:

No elections held under this Act shall be called in question except by an election petition presented to such authority and in accordance with such rules as may be made in this behalf.

Rule 2(1): Save as otherwise provided no election held under the Act, whether of a member, Sarpanch or Upa-Sarpanch of Gram Panchayat, President and Vice-President of Mandal Parishad and Member of Mandal Parishad Territorial Constituency and Chairperson of Zilla Parishad and Member of Zilla Parishad Territorial Constituency thereof, shall be called in question except by an election petition presented in accordance with these Rules to the Election Tribunal as defined in sub-rule (2) by any candidate or elector against the candidate who has been declared to have been duly elected (hereinafter called the returned candidate) or if there are two or more returned candidates against all or any such candidates.

Rule 2(i)(a): The Election Tribunal shall be,

(i) except in cases following under clause (ii);

(a) The District Munsiff, if there is more than one District Munsiff, the Principal District Munsiff, having territorial jurisdiction over the place in which the office of Gram Panchayat is located, in respect of the election of members, Sarpanches and Upa-Sarpanches of Gram Panchayats.

Rule 3: (i) The election petition shall be presented within thirty days from the date of the declaration of the result of the election.

Explanation: If the Court of the Subordinate Judge or the District Munsiff, as the case may be, or the Office of the Officer of the Government who is the Election Tribunal is closed on the last day of the thirty days aforesaid, the petition may be presented to the Election Tribunal on the next day afterwards on which such Court or Tribunal is open.

(ii) The petition shall contain a statement in concise form, the material facts on which the petitioner relies and the particulars of any corrupt practices which he alleges and shall, where necessary, be divided into paragraphs numbered consecutively. It shall be signed by the petitioner and verified in the manner prescribed for verification of pleadings in the Code of Civil Procedure, 1908.

Rule 5. (i) At the time of presentation of the petition, the petitioner shall deposit with it in cash Rs. 100/- (Rupees one hundred only) as security for the costs of the same.

Explanation: Where the election of more than one returned candidate is called in question a separate deposit shall be made in respect of each such returned candidate.

(ii) If the provisions of sub-rule (1) are not complied with, the Election Tribunal shall dismiss the petition.

(iii) On compliance with the provisions of sub-rule (1), the Election Tribunal shall proceed to enquire into the petition.

Rule 7. (i) Every election petition shall be enquired into by the Election Tribunal, as early as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 for the trial of suits:

Provided that it shall only be necessary for the Election Tribunal to make a memorandum of the substance of evidence of any witness examined by him.

(ii) The Election Tribunal shall have the powers which are vested in a Court under the Code of Civil Procedure, 1908, when trying a suit, in respect of the following matters:

- (a) discovery and inspection;
- (b) enforcing the attendance of witness and requiring the deposit of their expenses;
- (c) compelling the production of documents;
- (d) examining witnesses on oath;
- (e) reception of evidence taken on affidavit; and
- (f) issuing commissions for examination of witnesses, and may summon and examine suo motu any person whose evidence appears to him to be material;

Rule 12. If in the opinion of the Election Tribunal,

- (a) that on the date of his election, a Returned Candidate was not

qualified, or was disqualified, to be chosen to fill the seat under the Act, or

- (b) that any corrupt practice as laid down under Section 211 of the Act has been committed by a Returned Candidate or his election agent or by any other person with the consent of the Returned Candidate or his election agent, or
- (c) that any nomination has been improperly rejected, or
- (d) that the result of the election, in so far as it concerns a Returned Candidate has been materially affected,
 - (i) by the improper acceptance of any nomination, or
 - (ii) by any corrupt practice, committed in the interest of the Returned Candidate by an Agent other than his election agent, with the connivance of the Returned Candidate, or
 - (iii) by any improper reception, refusal, or rejection of any vote, or the reception of any vote which is void,
 - (iv) by any non-compliance with the provisions of the Act, or any Rules or orders made under the Act.
- (A) The Election Tribunal shall declare the election of the Returned Candidate to be void.
- (B) If the Election Tribunal holds the Returned Candidate guilty under Clause (b) and clause (d)(ii) of this rules, the Election Tribunal shall in addition to declare the election of the Returned Candidate as void, shall also declare that the Returned Candidate shall be disqualified to contest in any elections under this Act, for a period of six years from the date of the order.”

An analysis of the above reproduced provisions makes it clear that while the question as to whether a person elected as a member of the Gram Panchayat is not qualified or has become disqualified under Section 17, Section 18, Section 19, etc. can be decided under Section 22(1) by the District Court having jurisdiction over the area in which the office of the Gram Panchayat is situated, an election to any post under the Andhra Pradesh Panchayat Raj Act, 1994 can be called in question only by presenting an election petition to the Tribunal specified in Rule 2(2)(a) of the Rules and adjudicated by such Tribunal if it is satisfied about existence of either of the grounds enumerated in clauses (a) to (d) of Rule 12. Though the provisions of Section 22(1)

and Rule 12(a) read with Section 233 appear to be overlapping, the person seeking to challenge the election has the option to avail either of the remedies. In a given case, the aggrieved person (this term includes 'a voter') for the purpose of Section 22(1) can file a petition to the District Court under Section 22(1) even though an election petition may not have been filed within the prescribed time under Section 233 read with Rules 2(2)(a) and 3. In **M. Jagannadha Rao v. Government of A.P. & others** (supra), the learned Single Judge held that the remedies available under Sections 22 and 233 are simultaneous and a person who has already availed the remedy by filing election petition is not precluded from filing an application under Section 22(1). Paras 10 and 11 of the judgment which contain reasoning of the learned Single Judge read as under:

“10. On a careful scrutiny of Sections 2 and 233 of the Act, this Court is of the considered opinion that these provisions virtually operate in different fields and the scope and ambit also appear to be different. It cannot be said that the remedy by way of Election Petition always can be equated with the remedy under Section 22 of the Act. It is needless to say that the grounds which were raised and to be adjudicated on judicial side in Election Petition may be different grounds and the grounds which may be available in relation to disqualifications to be adjudged under Section 22 of the Act may be of limited nature which may have to be decided by the concerned authorities in accordance with the procedure under Section 22 of the Act. Be that as it may, the remedies available in relation to disqualification under Section 22 of the Act by authorities and by way of Election Petition under Section 233 of the Act, these are simultaneous remedies and merely because a party invokes the jurisdiction of Election Tribunal by filing Election Petition, unless there is specific prohibition, it cannot be said that such party cannot pursue the remedy under Section 22 of the Act. If such interpretation to be adopted it would amount to doing violence to the spirit of the legislation in introducing such remedies by indicating separate specific provisions viz. Section 22 of the Act and Section 233 of the Act. Hence, these two provisions and the exercise of powers in relation to the respective aspects, operate definitely in different fields at least upto some extent and may be that certain grounds may be overlapping.

11. It appears that the present writ petitioner had not filed the

Election O.Ps. specified supra. The ground of disqualification is being raised in the present writ petition, may be for the reason that the writ petitioner had not invoked the jurisdiction of any Election Tribunal whatsoever in relation to the election in question. Apart from this aspect of the matter, the writ petitioner as a voter of Gram Panchayat is approaching this Court complaining inaction on the part of respondents 1 to 4 in further proceeding with the action to be taken in relation to disqualification under Section 19(3) of the Act which had been complained of. Hence, this Court is of the considered opinion that the stand taken by the Counsel representing the 5th respondent on the ground that this is only a vexatious remedy thought of at the behest of unsuccessful candidate cannot be accepted. However, it is brought to the notice of this Court that the procedure under Section 22 of the Act as such had not been followed. When that being so, the question of further proceeding with the action to be taken would not arise unless the procedure prescribed as specified under Section 22 of the Act is followed by the writ petitioner.”

In the light of the above, it is to be seen whether respondent No.1 had the jurisdiction to entertain the petition filed by respondent No.2 for setting aside election of the appellant herein and for grant of a declaration for her own election. A reading of the petition filed by respondent No.2 on 18.08.2006 shows that she had invoked Sections 233, 19(3) and 22(1) of the Act and Rules 2(2)(i)(a) and 4(ii) of the Rules. The tenor and prayer of the petition filed by respondent No.2 shows that she had challenged the election of the appellant herein on the ground that in view of Section 19(3), she was not qualified to contest the election. She deposited the amount of Court fees of Rs.50/- and cost of Rs.100/- and stated that the petition was being filed within the limitation of thirty days. This clearly shows that the petition filed by respondent No.2 was in accordance with the election petition under Section 233 of the Act read with Rules 3, 5 and 12 of the Rules and not an application under Section 22(1) of the Act. The prayer made by respondent No.2 is more than sufficient to clear any misgiving or doubt about the nature of the petition filed by respondent No.2. If she had intended to seek only disqualification of the appellant herein, there

was no occasion for her to invoke the provisions of the Rules and make specific prayer for being declared as elected on the premise that she had secured the next highest votes.

District Court is not designated as an Election Tribunal within the meaning of Section 233 of the Act read with Rule 12(2)(i)(a) of the Rules. As a matter of fact, there does not exist any body or authority with the designation "Election Tribunal-cum-Principal District Judge". Therefore, respondent No.1 did not have jurisdiction to entertain the petition filed by respondent No.2 and the said respondent committed a grave illegality by rejecting the objection raised by the appellant herein to the very maintainability of the election petition.

For the reasons stated above, we hold that the learned Single Judge committed a serious error by holding that the petition filed by respondent No.2 could be treated as an application filed under Section 22(1) of the Act and respondent No.1 had the jurisdiction to decide the same.

In the result, the appeal is allowed. Order dated 30.04.2007 of the learned Single Judge is set aside. As a consequence, the writ petition filed by the appellant is allowed and order dated 04.01.2007 passed by respondent No.1 dismissing the application filed by her under Order VII Rule 11(d) of the Code of Civil Procedure read with Rule 3(2) and (7) of the Rules is set aside and it is declared that respondent No.1 did not have the jurisdiction to entertain the election petition filed by respondent No.2.

As a sequel to disposal of the main appeal, W.A.M.P.No. 1668 of 2007 filed by the appellant for interim relief is disposed of as infructuous.

G.S. SINGHVI, CJ

Date: 23-10-2007

G. ROHINI, J

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[\[1\]](#) 2005(1)ALT 426

[\[2\]](#) 2005(1) ALT 673

[\[3\]](#) 2007(1) ALD 779